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SPECIAL NOTICE.

Since the publication on page 163 of The Corporation Journal, of the fact that Maryland had followed the example of New York in passing an act to permit the creation of shares without par value, we have had so many inquiries as to the advantages of incorporating in that State that we print below the full text of the new provision and a brief summary of other provisions of the corporation laws of the State for the benefit of attorneys whose clients contemplate incorporation in a jurisdiction where the new form of stock is authorized. Further information regarding this law and forms of charters which have been filed thereunder may be had from us by attorneys who intend to incorporate in that State. A supply of copies of the laws of Maryland relating to business corporations has been obtained by us and will be distributed without charge to lawyers on request.

SHARES WITHOUT PAR VALUE. Laws of 1916, ch. 596, of Maryland, authorizes the issuance of shares without par value in the following words:

"34a. Any corporation of this State, heretofore or hereafter incorporated, except a banking, safe deposit, trust or loan corporation, may, if so provided in its charter, issue shares of stock, other than stock preferred as to dividends which is subject to redemption, or stock preferred as to its distributive share of the assets of the corporation upon dissolution, without any nominal or par value. In any case in which the law requires that the par value of the shares of a corporation be stated in a certificate of incorporation, articles of amendment, agreement of consolidation or in any other paper, it shall be stated, in respect of such shares, that such shares are without par value, and when the amount of such stock authorized is required to be stated, the number of shares thereof shall be stated, and it shall also be stated that such shares are without par value. For the purpose of the bonus tax and annual franchise tax imposed by the laws of this State, but for no other purpose, such shares shall be presumed to be of the par value of one hundred dollars each. For the purpose of any rule of law or of any statutory provision (except as in this section otherwise provided) relating to the amount of such

stock issued, the amount of such stock issued shall be taken to be the amount of cash or the value of the services or property (determined by the board of directors as required by law) for which such stock has been issued. Such stock may be issued for money in the manner provided in Section 35 of this Article for the issuance of stock for less than par, and for services in the manner provided therein for the issuance of stock for services, and for property in the manner provided therein for the issuance of stock for property. The number of shares of such stock may be increased or decreased in the manner and subject to the conditions provided in Sections 24 to 28, inclusive, of this Article. The amount of such stock issued may also be reduced, in the manner and subject to the conditions provided in said sections for the reduction of the par value of shares of stock. All other provisions of law relating to stock having a par value, so far as the same may be legally, necessarily or practically applicable, shall apply to and govern stock without par value."

THE CORPORATION LAW OF MARYLAND provides for a simple procedure for the incorporation and the subsequent management of corporation.

No formalities are required by statute previous to filing of certificate of incorporation. Incorporators need not be residents of the State, and no meetings of incorporators are required.

No subscriptions need be made to capital stock before organization or before commencing business.

Directors need not be stockholders or residents of the State, and their meetings may be held outside of the State.

Directors may be divided into five or a lesser number of classes.

Directors named in the certificate of incorporation may, before there is any stock outstanding and entitled to vote, adopt by-laws and authorize issuance of stock at any price and for property or services.

With the exception of the president, no officer need be a director.

Cumulative voting is permitted.

Neither stockholders, officers nor directors are liable for corporate debts.

The broadest powers of classification of stock are given.

Stock without par value may be issued.

Fully paid and non-assessable stock having a par value may be issued for less than par or for any consideration whatsoever in services or property without any liability attaching to the subscriber thereto or holder thereof beyond the obligation to comply with the terms of subscription contract.

No restrictions are placed upon the amount of stock* or indebtedness or upon the relative amounts of different classes of stock or of stock and indebtedness.

There is no limitation upon the holding of real* or personal property.

No amount is required to be paid in upon any class of stock.

Corporations issuing stock without par value may also issue fully paid and non-assessable preferred stock at less than par.

Corporations are specifically authorized to hold stock of other corporations.

The most liberal provisions are made for amendments to certificate of incorporation.

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*Except in the case of mining companies conducting operations within the state.

After the recording of a certificate of incorporation by the State Tax Commission, the existence of the corporation is not subject to collateral attack.

Voting trusts for not over five years are provided for.

No books except original or duplicate stock ledgers are required to be kept in the state.

The state requires no report upon the business condition of corporations.

Stock of Maryland corporations owned by non-resident decedents is not taxed under the collateral inheritance tax law.

The expenses of incorporating a business corporation are about as follows:

Bonus, 20 cents on each $1,000 of authorized capital, but not less than $20.
(For the purpose of this tax shares without par value are treated as having a par value of $100 each).

Recording and filing the charter..... $10.00
($3.50 of this fee is paid by the State Tax Commission to the Secretary of State for recording and $1.50 to the Clerk of the Circuit or Superior Court.)

Certified copy (when copy is supplied)..... 1.00

The annual franchise tax on business corporations is as follows:

On first $5,000 or less of capital stock issued and outstanding..... $10
On each additional $1,000 up to and including $50,000..... $1
On each additional $50,000 in excess of the first $50,000 up to and including $500,000..... $25
On each additional $1,000,000 in excess of the first $500,000 up to and including $5,000,000..... $250
On each additional $1,000,000 over $5,000,000..... $100

(For the purpose of this tax shares without par value are treated as having a par value of $100 each.)

Copies of the laws of Maryland relating to business corporations may be obtained by attorneys without charge from our nearest office.

DOMESTIC CORPORATIONS.

ARKANSAS.

DURATION OF CORPORATE EXISTENCE. The general statutes of Arkansas under which business corporations are organized do not limit the time of the existence of such corporations. Neither do they require that any definite period be specified in the articles of association. "The time limit for the existence of a corporation, therefore, rests primarily with the incorporators, and unless they specify a time in their articles of association, the franchise continues indefinitely." Where the shareholders of a corporation continue the existence of a company whose period of existence has expired according to its articles of association, it had a de facto existence after the time limit had expired, and up to the time that a new corporation was organized and its assets were transferred to it. Arlington Hotel Company v. Rector, 186 S. W. 622.

CALIFORNIA.

INDIVIDUAL PROFIT OF DIRECTOR. A director of a corporation is liable to account to it for compensation paid him under a secret contract with a firm for assisting it in selling the corporation's stock. The duty of securing subscriptions to the full amount of the fixed capital is one enjoined by law upon the directors. No director can lawfully make any secret profit for himself in the matter of such subscriptions. Western States Life Ins. Company v. Lockwood, 161 Pac. 498.

COLORADO.

LEASE EXECUTED WITHOUT CONSENT OF HOLDERS OF MAJORITY OF STOCK IS ILLEGAL. In 1899 the Adams Mining Company leased all its properties to one Nicholson for about ten years for insignificant royalties. The lease was subsequently transferred to the Western Mining Company and in 1904 an agreement was made to extend the term of the lease from Jan. 14, 1909 until Jan. 1, 1914, and in October, 1910, agreement was made to extend the lease until Jan. 1, 1920. The original and the extensions were made without submission to the stockholders of the Adams Mining Company for their approval. No reports were made to the stockholders for twelve years, although more than two million dollars' worth of ore was extracted from the mines. Certain stockholders brought suit on behalf of themselves and other stockholders similarly situated to set aside the lease and its extensions, for an accounting of ores extracted from the mine and for an injunction against further operations by the defendants.

The Eighth Circuit Court of Appeals, reverses the District Court and holds that the complaint states a cause of action.

Section 865 of the Revised Statutes of Colorado, 1908, provides that: "The board of directors or trustees of a mining or manufacturing corporation shall not have power to incumber the mines or plant of such corporation, or the principal machinery incident to the production from such mine or plant until the question shall have been submitted at a proper and legal meeting of the stockholders and a majority of all the shares of stock shall have been voted in favor of such proposition; and any mortgaging or incumbering of such property, without such consent shall be absolutely void, and the vote upon such proposition shall be entered on the minutes of the corporation." A lease is an incumbrance within the sense of this statute and until it has been submitted at a proper and legal meeting of the stockholders and a majority of all the shares of stock have voted in its favor, it is voidable by any stockholder and "he may maintain a suit to set it aside without the assent of the majority of the stockholders or of any other stockholder than himself to a repudiation of the incumbrance." Delay in bringing the instant suit is no defense. The making of the leases and of the extensions were kept secret from the stockholders. No duty rested upon them to watch over or search out the acts of the directors. Elder v. Western Mining Co., 237 Fed. 966.

DELAWARE.

INSOLVENCY AND RECEIVERSHIP. "By statute in Delaware a receiver may be appointed for a corporation on the ground of its insolvency. Insolvency

not being defined in the statute may consist of a deficiency of assets over liabilities, or inability to meet financial obligations as they mature in the usual course of business, or both conditions may exist." The complete exclusion of the owner of one-half of the outstanding shares of the capital stock from any participation in the management is not of itself sufficient reason for the appointment of a receiver. This has no bearing on the question of solvency. Whitmer v. William Whitmer & Sons, 99 Atl. 428.

ILLINOIS.

INCORPORATION FEES. Sections 10a, 10b and 10c of Ch. 53, Hurd's Revised Statutes 1916, provide that all corporations upon incorporation or increase of capital stock shall pay certain fees based on the proposed authorized capital stock before any papers may be filed with the Secretary of State and make it unlawful to do business until such fees have been paid to the Secretary of State. Ch. 111a provides for the regulation of public utilities and authorizes the public utility commission to regulate the issue of stock and bonds. Sec. 31 of this Chapter requires the commission to charge an amount equal to ten cents for every hundred dollars of securities it authorizes to be issued, which sum is to be paid into the State Treasury.

In 1914 the New York Central Railroad Company was formed by the consolidation of eleven different railroad companies, two of which were Illinois corporations. The fee required by Sec. 31 of the public utilities law was paid, amounting to $249,590.46. The Secretary of State, however, refused to file the consolidation papers until an additional fee of $300,045 was paid him under Ch. 53, Sec. 10a. The amount was paid under protest and the corporation sued for its recovery. In deciding the case the Illinois Supreme Court says: "From a consideration of the two acts we are of opinion that to hold that payment is required under the incorporation fee act and also under section 31 of the public utilities act is double taxation, and we are unable to see any intention of the legislature, plainly and unmistakably, to impose both. On the contrary, it seems more reasonable that when the legislature placed the authority to consent to the issue of stock in the Utilities Commission, and authorized it to require, as a condition precedent to giving consent, the payment into the State Treasury of the same sum per $100 as required by the former act, it intended the payment should be in lieu of the payment under the former act, when the grant of the corporate franchise carried with it or included the right to issue the full amount of the capital stock. In our opinion it must be held that section 31 of the public utilities act operated to repeal the incorporation fee act as applied to corporations of a character of the appellee." (The New York Central Railroad Company, appellee, vs. Lewis G. Stevenson, appellant. Opinion by Justice Farmer, docket No. 11148, December Term 1916,—not yet officially reported.)

LOUISIANA.

RIGHT OF PLEDGEE TO TRANSFER STOCK. Act 180 of 1904 (the uniform stock transfer law) provides "that the delivery of a stock certificate of a corporation to a bona fide purchaser or pledgee, for value, together with a written

transfer of the same, or a written power of attorney to sell, assign, and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against all parties." A pledgee of stock under an instrument which contained a power to transfer, presented the same for transfer. In the meantime the pledgor notified the corporation by formal letter that he had "recalled and revoked" the power of attorney to transfer. On account of this alleged revocation the corporation refused to transfer the stock to the pledgee. The court held this refusal to be improper and the pledgee was entitled to recover from the corporation the rental value for the time that transfer was withheld (this being a form of stock which had a peculiar value in this respect) together with interest and costs, but depreciation in market value was not allowed,—since the terms of the pledge gave him no power of sale during the interval. Eisenhauer v. New Orleans Cotton Exchange, 73 So. 685. A dissenting opinion regards the corporation as a "mere stakeholder" and states that "where the parties themselves admit that a suit is necessary to determine their respective rights, and such suit is actually instituted, it is for the court, and not the corporation, to decide the issue of title."

MISSOURI.

LIABILITIES AND FORFEITURE FOR FAILURE TO FILE ANNUAL REPORT. Laws of 1913, pages 167 to 174, requiring corporations to file an annual report, provide in section 10 for the forfeiture of corporate rights and privileges of companies that fail to file the report, and in section 10 that "the officers and directors of any corporation which shall so violate the provisions of this act shall be held as partners and become severally and individually liable for the debts of such corporation." This provision for individual liability is void since it is in conflict with Const. Art. 4, sec. 28, providing that no bill shall contain more than one subject which shall be clearly expressed in its title. Moreover, failure to report does not *ipso facto* forfeit the charter. As a condition precedent to the right of the Secretary of State to declare a forfeiture and cancel the certificate of such corporation he must have on file in his office the certificate of the recorder of deeds that the name of the corporation so failing to report was posted in a conspicuous place in his office for a period of twenty days. Woodward Hardware Co. v. Fisher, 190, S. W. 576.

LIABILITY FOR SERVICES OF PROMOTER. A corporation is not obliged to pay for the reasonable value of services in procuring the sale or subscriptions to its capital stock before it is organized, rendered at the instance of other promoters who held themselves out as officers. "Here we have nothing to carry knowledge to the stockholders as a body, or even a majority of them, nor is there any proof even tending to show ratification by the stockholders of any agreement by which the assets of the corporation, which they were invited to become a part of, were subject to any burden for preliminary work of organization, a burden which might have 'killed' the organization at the start." Van Zandt v. St. Louis Wholesale Grocer Co., 190 S. W. 1050.

NEVADA.

AN ERROR IN THE ARTICLES OF INCORPORATION with respect to the statement of the par value of shares may be cured by filing an amendment with the

Secretary of State as provided in section 39 of the General Corporation Law. Report of Attorney General, 1915–1916, p. 92.

PREFERRED STOCK. If the articles of incorporation so provide preferred stock can, under section 10 of the Nevada Corporation Act, be so made that after drawing its preferred dividend, it will participate with the common stock in the earnings of the company. Report of Attorney General, 1915–1916, p. 72.

NEW JERSEY.

BETHLEHEM STOCK ISSUE APPROVED. The General Investment Company, of which C. H. Venner is president, applied to a New Jersey Chancery Court to restrain proceedings to increase the capital stock of the Bethlehem Steel Co. from $30,000,000 to $75,000,000. The Chancellor denied relief, holding, among other things, that it is within the rights of the corporation to issue common stock known as Class B stock without a voting privilege.

NEW YORK.

TRANSPORTATION PURPOSES NOT ALLOWED UNDER BUSINESS CORPORATIONS LAW. Proposed certificates of incorporation of the "American Foreign Power Corporation" and the "Panama Electric Securities Corporation" contained among their purposes the power to acq ire, construct, and operate street, steam, electric or other railroads with a proviso that such enumerated purposes were to be exercised only without the state of New York and only to the extent allowed corporations under the Business Corporation Laws of New York, and that they were not to be construed to authorize the operation of a railroad in a foreign country. The Attorney General disapproves the filing of these certificates by the Secretary of State. "A certificate of incorporation should state concisely the objects for which it is to be formed without any modifications or statements that the purposes and powers to be exercised by it are only those permitted under the provisions of the law under which they are incorporated, so that any person dealing with it may know exactly the extent of its powers without the necessity of an opinion of the attorney general or the courts construing its powers and approving or disapproving the filing of such certificates by the Secretary of State. A transportation corporation cannot be formed with less than seven members, and a corporation desiring to maintain and operate a railroad requires fifteen or more persons to organize such a corporation. The requirements are entirely different for the organization of a corporation to do a transportation or railroad business than of a purely business corporation. The provision of a given statute for the incorporation of a company to do certain branches of business should not be construed so as to permit such a corporation to do a business thereunder, which is specifically provided for in other statutes. All the powers stated in a proposed charter should be such as may be exercised by the kind of corporation being formed. If such a certificate would be permitted to be filed, the corporation would start such business with the sanction of the State, and its powers then could only be curtailed by resorting to the courts to determine whether in fact such corporation was conducting

its business within the prescribed provisions of the Business Corporations Law." Opinion of Attorney General, No. 56 Advance Sheets State Department Reports 121.

BUSINESS CORPORATION MAY NOT ACT AS AN INSURER. A corporation organized under the Business Corporations Law (Consol. Laws, chap. 4) made contracts providing for the care for a fixed term, for a certain consideration, of plate glass, and in the event that the glass be broken within the fixed term, it agreed to replace the broken glass. At the instance of the State the corporate existence of the company is annulled. It is an attempt to evade the provisions of the Insurance Law. "A plate glass insurance policy issued by a company authorized to do plate glass insurance provides for the replacing of glass in the event of its being broken or for the payment of a given sum of money, either one or the other. The fact that the defendant's contract provides, in addition to the replacing of a broken glass, to keep the glass puttied in the frame during the period of the contract is quite beside the mark. This provision of the contract is simply in the nature of an inspection, and is really for the protection of the company insuring the glass. Because the company agrees to inspect and putty does not alter in any way the nature of the contract. No plate glass owner enters into one of these contracts, agreeing to pay a stipulated sum for the purpose of having his window glass puttied, he takes it for the purpose of insuring himself against loss by reason of the breakage of the glass." People v. Standard Plate Glass & Salvage Co., Inc., 174 N. Y. App. Div. 501.

CORPORATE POWERS. A manufacturing corporation does not assume to act as an electrical company in generating its own electric current for its own use though its transmission line must pass under a public bridge and over state property. Consent of the Public Service Commission is not necessary. Fulton Light, Heat & Power Co. v. Granby P. & P. Co., No. 57 Advance Sheets State Dept. Rep. 9.

RIGHT OF STOCKHOLDER TO STATEMENT OF AFFAIRS. Section 69 of the Stock Corporation Law provides that stockholders owning five per cent. of the capital stock of a corporation other than a moneyed corporation, not exceeding one hundred thousand dollars, or three per cent. where it exceeds one hundred thousand dollars, may make a written request to the treasurer for a statement of the corporation's affairs. For neglect or refusal to deliver the statement within thirty days or within such extended time as may be ordered by court the treasurer is liable to the stockholder for fifty dollars and an additional ten dollars for every twenty-four hours until the statement is furnished.

In order to maintain an action for this penalty the stockholder must prove that the defendant was "treasurer or chief fiscal officer" at the time he made demand. He must prove that the company was incorporated. As the action is not against the corporation, section 1776 of the Code of Civil Procedure, providing that a verified answer must deny corporate existence to make that fact an issue, does not apply. Plaintiff must also be a stockholder of record. A statement by plaintiff in these words: "I hold certificate No. 10 for 75 shares in the name of Frank W. Marsh. (Signed) Edward A. Tighe" is not sufficient. This does not prove, but negatives ownership. Tighe v. Lavery, 162 N. Y. Supp. 1005.

A stockholder who receives an unverified or incomplete statement in answer to his demand should object at the time. When he receives a statement to a date specified by him he is not authorized to demand another statement during that year, though the second statement is requested to show the corporate affairs as of a later date. Sutton v. MacBride, 162 N. Y. Supp. 1023.

JURISDICTION OF COURTS WITH RESPECT TO STOCK CLAIMED BY NON-RESIDENTS. An interest in the capital stock of a domestic corporation is property having its location or situs in the state wherein the corporation is organized. An action affecting the apparent title and ownership of that interest is one in the nature of a proceeding in rem, in which jurisdiction of a non-resident defendant may be obtained by service of summons by publication. Holmes v. Camp, 219 N. Y. 359, 114 N. E. 841.

AUTHORITY OF PRESIDENT. Granting a license under a patent owned by a corporation organized, among other things, "to acquire, sell, and deal in patents and patent rights upon inventions" is within the powers of its president without the express sanction of the board of directors. Bijur Motor Lighting Co. v. Eclipse Mach. Co., 237 Fed. 89.

SUIT BY STOCKHOLDER TO ENFORCE CORPORATE RIGHT. The fact that a stockholder owns all excepting four shares or even if he owns all the shares of a corporation, does not give him the right to bring a suit in his individual name to enforce a corporate right. Van Cleave v. Demorest, 174 N. Y. App. Div. 928.

PENNSYLVANIA.

RESIDENCE OF DIRECTORS. The Act of January 7, 1867 (P. L. 1368) requires a majority of the board of directors of a railroad corporation, to be citizens of Pennsylvania. A board composed entirely of non-residents passed resolutions locating a new line. Condemnation under such resolutions will not be enjoined. Such directors are at least officers de facto, and so long as their right to hold office is not contested their acts in the exercise of the duties of their office cannot be attacked in a collateral proceeding. "In such case the remedy is by quo warranto to try the title to office, and the question cannot be raised by proceedings for an injunction." Williams v. Delaware, L. & W. R. Co., 99 Atl. 477.

GENERAL.

SHARES WITHOUT PAR VALUE. For the last quarter of a century prominent thinkers have advocated the removal of the dollar sign from the share of stock. The dollar mark has been characterized as misleading, and the legal requirement that a share of stock have a nominal par value, as wholly useless. The attention of investors, it is claimed, has been diverted thereby from the truth that a common share of stock represents neither more nor less than a certain aliquot part of the net value of the enterprise over and above all debts and stock preferences.

Four years ago a law was passed in New York authorizing the formation of corporations having shares without par value. It obviates the question of stockholders' liability to creditors and it permits distribution of stock at the time of organization in a simple, logical way.

Recently the State of Maryland passed a similar law, which is printed in full on the first page of this number of The Corporation Journal. The legislatures of New Jersey, Maine and Delaware, now in session, are considering the adoption of similar statutes. This new form of stock is attracting much attention in business and financial circles and many other states will no doubt follow the lead of New York and Maryland.

FOREIGN CORPORATIONS.

ALABAMA.

DOING BUSINESS. Installation of a soda fountain by a foreign corporation was a reasonable incident of sale and constituted a single act of interstate commerce. Accepting an old fountain in reduction of the price for the new one was merely incidental and does not change the conclusion that qualification as a foreign corporation was unnceessary in order to enable it to bring suit for the balance of the purchase price. Puffer Mfg. Co. v. Kelly, 73 So. 403.

ARKANSAS.

CONDUCTING SALES WITHOUT CREATING AGENCY. A medicine company contracted to sell a medicine wagon to a resident of the state and to sell him medicines at certain prices agreeing to repurchase them on stated conditions. It also furnished a booklet, letters and circulars of instructions. The relation created is that of vendor and vendee and not principal and agent. The company is not required to qualify as a foreign corporation in order to sue for any balance due under the contract. The Court concedes the narrow distinction between their present conclusion and that arrived at in the earlier cases of Clark v. J. R. Watkins Medical Co., 115 Ark. 166, 171 S. W. 136 and J. R. Watkins Medical Co. v. Williams, 124 Ark. 539, 187 S. W. 653 (Corporation Journal p. 243) W. T. Rawleigh Medical Co. v. Holcomb, 191 S. W. 215.

IDAHO.

DOING BUSINESS. ISOLATED TRANSACTIONS. Taking title to real estate in behalf of a corporation was the first of a series of acts, intended to be done by the corporation in the state. This constitutes "doing business" and is not an "isolated transaction" in the sense in which that term is used in exempting from requirements of qualification. "The cases holding that a single isolated transaction is not to be considered doing or carrying on of business within the state are cases where the matter involved was a single transaction without any intention on the part of the foreign corporation of continuing to transact other acts of business within the state." Donaldson v. Thousand Springs Power Co., 162 Pac. 334.

PENALTIES FOR FAILURE TO QUALIFY. Section 2792 Rev. Codes, as amended by Session Laws 1915, provides that a foreign corporation which has failed to comply with the foreign corporation laws, "cannot take or hold title to any realty within this State prior to making such filings, and any pretended deed or conveyance of real estate to such corporation prior to such filings shall be absolutely null and void." Taking title to real estate by an agent for the use and benefit of a non-complying foreign corporation is an ineffectual evasion of the statute. "A prohibitory statute providing that such foreign corporation cannot take or hold title to any realty within this State prior to making the filing required by the statute must be construed to mean any title." Donaldson v. Thousand Springs Power Co., 162 Pac. 334.

MISSOURI.

CREATION OF A PENSION FUND FOR OFFICERS AND EMPLOYEES is within the implied powers of a corporation. Heinz v. National Bank of Commerce, 237 Fed. 942.

NEVADA.

FILING AMENDMENTS TO ARTICLES OF INCORPORATION of foreign corporations admitted to business in the State with the Secretary of State and a certified copy thereof in the office of the County Clerk of the county where the principal place of business is located, is required according to an opinion of the Attorney General. Report of Attorney General, 1915–1916, p. 91.

PROCEDURE FOR REINSTATEMENT. The only acts necessary to reinstate a foreign corporation, which has lost its right to do business in this State, is a full compliance with section 1186 Revised Laws, 1912, requiring foreign corporations to file with the Secretary of State a statement giving the names, date of election, term of office, residence and post office address, and character of business, of directors and officers, location of principal office and name of resident agent. Report of Attorney General 1915–1916, p. 55.

PROTECTION OF NAME. The Secretary of State would not be justified in receiving and filing articles of incorporation of a domestic railroad corporation of the same name as that of a foreign railroad corporation previously qualified to do business in the State. Report of Attorney General 1915–1916, p. 64.

NEW YORK.

BIDS FOR PUBLIC WORK BY UNLICENSED CORPORATIONS. "It is the policy of the State no matter what the penalty is for disobedience of that policy to keep foreign corporations from doing business here without a license. A State officer is not justified and would not be judically upheld in inviting or forcing a foreign unlicensed corporation to enter into a contract in this State in face of the prohibition in section 15. [General Corporation Law.]" A foreign construction company deposited with its proposal for construction of a State highway, a certified check under special agreement that it shall become the property of the

State in case the proposal shall be accepted and the company shall fail to execute a contract with and furnish the surety required by the Commission of Highways. The Commission may retain a check so given by an unlicensed foreign corporation, but cannot force it to execute the contract. "Such an agreement once having been made by the corporation is valid even though permission to do business in this State has not yet been obtained." The contract is not void, the only penalty is that the corporation cannot sue upon it. In this case the foreign corporation found after the bid was accepted that a domestic corporation had the same name as its own and it could not receive permission to do business in the State without first changing its name. Opinion of Attorney General, No. 57 Advance Sheets State Dept. Rep. 77.

TRUSTS AND MONOPOLIES.

NEW YORK.

CONTRACT IN PARTIAL RESTRAINT OF TRADE. A large stockholder sold his shares to the president who agreed that for a term of years the company would not sell its products in the New England states. This agreement is valid and enforceable against a successor corporation. It falls within the principle of the decisions holding that covenants which are ancillary or incident to a lawful contract, although they may be in partial restraint of trade, are valid, if founded on a good consideration and limited to a reasonable protection of the covenantee. The Court observes that this is so, "even though the vendor is not parting with the good will of a business and they are made by the vendee, although such covenants are ordinarily made by the vendor, and most of the adjudicated cases have consequently arisen with respect to covenants by vendors." Alden v. Wright, 162 N. Y. Supp. 668.

INCOME TAX.

RULINGS AND REGULATIONS.

For preceding reference to rulings see Corporation Journal, page 295.

The appraised value of property at the time of death of owner, if subsequent to March 1, 1913, is the basis for determining the gain or loss on the disposition of such property by the fiduciary or the beneficiaries (p. 320).

The excess amounts received at maturity of shares in a building and loan association and on surrender of a life insurance policy constitute taxable income (p. 320).

Banks receiving deposits of dividends of American corporations for the credit of non-resident aliens are not required to file returns as agents (p. 321).

The method of accounting for profit or loss by the lessor and the lessee with respect to permanent improvements made under rental or leasing contracts is outlined in a Treasury Decision (p. 322).

A receiver for an individual is obliged to make return and pay tax on income received regardless of its disposition (p. 323).

A letter from the Commissioner of Internal Revenue deals with the proper treatment of an amount paid in satisfaction of a judgment for damages in years preceding and following the incidence of the tax (p. 323).

The time for filing returns by non-resident aliens and foreign corporations and their proper representatives in this country and by, or in behalf of, American citizens residing or traveling abroad, is extended to May 1, 1917 (p. 324). This general extension, however, does not apply to American corporations doing business in foreign countries (p. 334).

A formal Treasury Decision outlines the manner of computing depletion deductions from gross income in the case of mines (p. 325) and another Treasury Decision treats of the deduction for depletion of oil or gas properties under the new provisions of the income tax law (p. 228).

A decision of the Federal District Court holds that the interest received by brokers from customers should be included as gross income and the interest paid by brokers is allowable as interest payable on its bonded or other indebtedness (p. 332).

Commissions paid to salesmen are not subject to deduction of the tax at the source when the salesman is required to pay out of the same traveling or other necessary expenses. If no necessary business expense is incurred in earning the commission the commission is subject to deduction of the tax at the source (p. 334).

(NOTE.—The page references are to our Income Tax Service, 1917, in which these rulings are printed in full. Some of these rulings are formal treasury decisions; others are contained in letters answering specific questions.)

FEDERAL STATE TAX.

RULINGS AND REGULATIONS.

For preceding reference see Corporation Journal, page 281.

Where, under a provision of the statute, property of husband and wife is held by them as tenants in the entirety the estate of the decedent will be chargeable with one-half of the total value of such property (p. 35).

Transfer agents are not required to ascertain whether administrators or executors of resident decedents have filed Form 704 before transferring stock to the executor or administrator, or from such executor or administrator to the beneficiaries. Where stock is to be transferred to the next succeeding owner without the intervention of an executor or administrator the transfer agent should determine that the beneficiary has filed Form 704 (p. 36).

The value of United States bonds cannot be excluded from the gross or net estate in determining the estate tax due (p. 37).

(NOTE.—The page references are to our War Tax Service where these rulings and regulations are reported in full.)

MUNITION MANUFACTURER'S TAX.

RULINGS AND REGULATIONS.

For preceding reference see Corporation Journal, page 282.

The Treasury Department has issued a series of thirteen queries and answers regarding the liability for tax of manufacturers making parts which enter into the

final production of munitions; the proper charges for raw materials; the exemption for interest paid on loans in the year; amortization, etc. (p. 221).

(NOTE.—The page references are to our War Tax Service where these rulings are printed in full).

MISCELLANEOUS TAXES.

RULINGS AND REGULATIONS.

For preceding reference see Corporation Journal, page 282.

A ruling on distilled spirits in bonded warehouses holds that packages showing a loss of 50% over the maximum statutory allowance, but not exceeding three proof gallons, may be permitted to remain in the warehouse until the spirits therein contained are eligible for bottling in bond (p. 441).

A Treasury Decision provides for the remission of tax on brandy used for fortifying wines in the possession of the producer on September 9, 1916 (p. 442).

A formal Treasury Decision has been issued containing instructions relating to assignment of general storekeeper-gaugers to distillery, general and special bonded warehouses (p. 443).

(NOTE.—The page references are to our War Tax Service, in which these regulations are printed in full.)

CAPITAL STOCK TAX.

RULINGS AND REGULATIONS.

For preceding reference see Corporation Journal, page 292.

Foreign corporations transacting business in the United States should include bank balances on deposit in the United States as capital invested in this country if the money is carried on the books of the company as capital invested in the business (p. 647).

(NOTE.—The page reference is to our War Tax Service where this ruling is printed in full.)

FEDERAL RESERVE.

RULINGS AND REGULATIONS.

For preceding reference see Corporation Journal, page 298.

Informal rulings have been made regarding bill of lading drafts, agricultural and live stock paper and trade acceptances for advertising (pp. 644–645).

The Law Department has published opinions on trade acceptances based on advertising space; on rights of liquidating national bank to accrued dividends; and on the question as to whether a member of the advisory committee of a national bank is an officer, director or employee of such bank within the meaning of section 8 of the Clayton Anti-Trust Law (pp. 645–648).

The Federal Reserve Board has issued a statement of the earnings and expenses of the Federal Reserve Banks for 1916 and of receipts and disbursements by the Federal Reserve Board for the same period (pp. 649–655).

The Federal Reserve Board and the Treasury Department have agreed upon a plan whereby Federal Reserve Banks may forward unfit federal reserve notes of other Federal Reserve Banks direct to Washington for redemption. This plan is set forth on pages 656 and 657.

(NOTE.—The page references are to our Federal Reserve Act Service which reports all rulings and regulations of the Federal Reserve Board.)

TRADE COMMISSION.

No rulings or regulations have been issued since our last report. See Corporation Journal, page 233.

CONGRESS.

RULINGS AND REGULATIONS.

At the time of going to press the Senate had passed the House Revenue Bill (H. R. 20573) without change or amendment. The President signed the Bill on March 3. As stated in the last number of our Journal, page 299, the excess profits tax provided for by this Bill will be based on annual income for the year 1917.

A copy of this important law may be obtained, as soon as it is printed, from our nearest office.

NEW PUBLICATIONS.

EXCESS PROFITS TAX LAW. We have published this new law in pamphlet form for free distribution. Copies may be obtained from our nearest office.

LAWS OF MARYLAND RELATING TO BUSINESS CORPORATIONS. Copies of this pamphlet published by authority of the State Tax Commission of Maryland, 1916, containing the important amendments made by the last legislature, including the provision for creating shares without par value, may be obtained without charge from our nearest office.

PROCEEDINGS OF THE TENTH NATIONAL CONFERENCE OF THE NATIONAL TAX ASSOCIATION. This important annual contribution to the subject of taxation contains this year the addresses and discussion at the official conference held at Indianapolis, August 28–31, 1916. This Conference was attended by official delegates appointed by the Executives of States and Canadian Provinces, Tax Officials, Economists and prominent business men from all parts of this country and Canada. The price of the volume is $3.00 postpaid. Orders may be sent to Fred R. Fairchild, Secretary, National Tax Association, New Haven, Connecticut, or A. E. Holcomb, Treasurer, 195 Broadway, New York City.

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EXCESS PROFITS TAX.

The administration of the new law imposing a tax on excess profits of corporations and partnerships devolves on the Treasury Department.

Many rulings and regulations will be necessary to construe the vague language of the law. To keep posted on these will be unusually important on account of the heavy burden of the tax.

All rulings, regulations and decisions will be reported in full in our War Tax Service.

This Service also covers the capital stock tax, the munitions tax and the estate tax.

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